

### REMARKS

Claims 1-31 remain pending after entry of this amendment. Claims 30 and 31 were added herein. Claims 1, 18, 21, 26, 28, and 29 were amended herein. The claims were amended to more fully clarify the claimed subject matter. Favorable reconsideration is respectfully requested in light of the amendments and remarks submitted herein.

Claims 18, 21, and 28 are rejected under 35 U.S.C. § 112, second paragraph. Applicant respectfully traverses this rejection.

Claims 1, 2, 11, 13, 24, 25, and 29 are rejected under 35 U.S.C. § 102(b) as being anticipated by Schmidt (DE 19627865). Applicant respectfully traverses this rejection.

Claims 26, and 27 are rejected under 35 U.S.C. § 102(b) as being anticipated by Malmin (3,949,479). Applicant respectfully traverses this rejection.

Claims 7-10 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmidt (DE 19627865). Applicant respectfully traverses this rejection.

Claims 6, 14, 16, and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmidt (DE 19627865) in view of Walser (DE953831). Applicant respectfully traverses this rejection.

Claims 21 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmidt (DE 19627865) in view of Roubian (2,644,232). Applicant respectfully traverses this rejection.

Claims 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmidt (DE 19627865) in view of Bartee et al. (5,957,690). Applicant respectfully traverses this rejection.

### Rejection under 35 U.S.C. § 112

Claims 18, 21, and 28 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Specifically, with respect to claim 18, the Examiner asserts that the "preferably..." phrase renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Claim 18 has been amended to remove the phrase starting with "preferably". The subject matter that was intended to be covered by this phrase is now presented in newly added claim 30.

With respect to claim 21, the Examiner asserts that the alternative language, along with the use of the term "respectively" is confusing. The alternative has been removed from claim 21 and the subject matter that was intended to be covered by this phrase is now presented in newly added claim 31.

With respect to claim 28, the Examiner asserts that it is unclear because it appears to be claiming the cavity of claim 26. Claim 28 has been amended to clarify that the kit contains a medical membrane which comprises at least one roughened surface which as a porous and/or reticular structure and a device.

In light of the amendments to claims 18, 21, and 28, and newly added claims 30 and 31, Applicant respectfully submits that the rejection under 35 U.S.C. § 112, second paragraph should be withdrawn.

#### **Rejection under 35 U.S.C. § 102**

Claims 1, 2, 11, 13, 24, 25, and 29 are rejected under 35 U.S.C. § 102(b) as being anticipated by Schmidt (DE 19627865). The Examiner asserts that Schmidt shows a medical membrane 20 that includes at least one roughened surface (due to particles), which has a porous (semi-permeable) surface. Applicant respectfully disagrees with the Examiner's characterization of Schmidt. Applicant provides herewith a translation of Schmidt.

The embodiment depicted in Figure 2 includes a laterally extended foil 20, which is semipermeable. The laterally extended foil 20 does not, as the Examiner asserts contain "at least one roughened surface (due to particles)". As seen by the explanation of Figure 2, the "dots" shown on the surface of the extended foil 20 are meant to depict that the foil is semipermeable, not that there are particles on the foil.

The particles referred to in the abstract, and claim 1 refer to the particles that can be used to make up the fiber bundle, see Figure 3 and 4 for example. There is no indication that any of the solid bodies 10, or the extended foil 20 are covered in particles.

Therefore, Applicant respectfully asserts that Schmidt does not disclose a membrane that comprises at least one roughened surface, which has a porous structure, a reticular structure, or some combination thereof. Because claims 2, 11, 13, and 29 are dependent on, or contain all the limitations of claim 1, they are likewise not anticipated thereby.

Claims 24 and 25 are directed to a method for the application of a medical membrane in dentistry. The method includes the step of filling the cavity above a medical membrane in a tooth cavity with restorative material. The method leads to a hermetically sealed medical membrane.

Conversely, Schmidt discloses a temporary filling that is removed from the tooth cavity after a certain time. The temporary filling is designed to ensure that no pressure build up occurs in the tooth. Schmidt therefore teaches one of skill in the art that the temporary filling is not overlaid with a restorative material in order to achieve the desired effect. Because Schmidt does not disclose all of the elements of the method, Applicant respectfully asserts that claims 24 and 25 are not anticipated by Schmidt. Applicant therefore respectfully requests that this rejection be withdrawn.

Claims 26 and 27 are rejected under 35 U.S.C. § 102(b) as being anticipated by Malmin (3,949,479). The Examiner asserts that Malmin shows a device having a handle 42 and a skeleton form 43 that may be removed from the handle and left in the tooth cavity to become embedded in a filling in the cavity. Although Applicant does not necessarily agree with the Examiner, claim 26 has been amended to specify that the removable skeleton form has a hemispherical shape.

#### **Rejections under 35 U.S.C. § 103**

Claims 7-10 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmidt (DE 19627865). Applicant reiterates the comments offered above regarding Schmidt and respectfully asserts that Schmidt also does not suggest that the surface of the semipermeable membrane comprises at least one porous structure, reticular structure, or some combination thereof. Therefore, Applicant respectfully requests that this rejection be withdrawn.

Claims 6, 14, 16, and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmidt (DE 19627865) in view of Walser (DE953831). Applicant reiterates the comments offered about Schmidt. Applicant also asserts that Walser discloses insulating layers for the protection of pulp against thermal and chemical irritations. The insulating layers have an adhesive surface, but there is no discussion or suggestion about the surface structure of the insulation layer. Therefore, Walser fails to remedy the deficiencies of Schmidt and Applicant respectfully requests that this rejection be withdrawn.

Claims 21 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmidt (DE 19627865) in view of Roubian (2,644,232). Applicant reiterates the comments offered about Schmidt. Applicant also asserts that Roubian describes an insulating pad for dental cavities. The pad is made of a material that is mildly plastic (column 1, lines 33ff and column 2, lines 4ff). The pad is produced by impregnating a flexible base with a plastic material. Again, there is no disclosure or suggestion of the surface structure of the pad of Roubian. Therefore, Roubian fails to remedy the deficiencies of Schmidt and Applicant respectfully requests that this rejection be withdrawn.

Claims 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmidt (DE 19627865) in view of Bartee et al. (5,957,690). Applicant reiterates the comments offered about Schmidt. Applicant also asserts that Bartee discloses a substantially non-porous PTFE membrane for use in bone regeneration. One surface of the membrane is textured and the other surface is substantially smooth. The non-porous nature of the membrane prevents gingival tissue from growing into or through the membrane (column 4, line 49ff). This document does not disclose nor suggest a membrane for use in a tooth cavity. Applicant respectfully asserts that one of skill in the art would not have been motivated to combine the teachings of Schmidt and Bartee because Bartee is not analogous art, and therefore one of skill in the art of dental implants would not consider its teachings. Applicant also asserts that even if Bartee were analogous prior art, it still fails to disclose or suggest all of the elements of the claimed invention. Therefore, Applicant respectfully requests that this rejection be withdrawn.

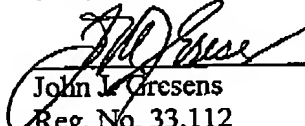
Conclusion

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Date: 10/30/03

  
John J. Gressens  
Reg. No. 33,112  
JJG/AMN

